



Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

Phone 410-641-2770 Fax 410-641-2316

www.berlinmd.gov

NOTICE OF PUBLIC HEARING

Town of Berlin Board of Appeals

Pursuant to the requirements of §108-191 of the Code of the Town of Berlin, notice is hereby given that a public hearing will be conducted by the Berlin Board of Zoning Appeals in the Mayor and Council Chambers of Berlin Town Hall, 10 William Street, Berlin, Maryland on

**WEDNESDAY, July 7, 2021
6:30 PM**

1. Approval of Minutes – April 14th, 2021
2. Loren Hershberger – 7 Cape Circle - Requesting a variance to be allowed to put a 6' fence in the front yard setback where 4 feet high is the maximum permitted.
3. Maple Avenue of Berlin, LLC and UTR Ventures, LLC – Requesting a Conditional Use for Construction of 33 Multifamily Townhouse Units.
4. Maple Avenue of Berlin LLC and UTR Ventures, LLC – Requesting a Variance from Section 108-715(1) to reduce the required width of each dwelling from 18 feet wide to the designed 16 feet in width.

Any persons having questions about the above-referenced meeting or any persons needing special accommodations should contact Dave Engelhart at 410-641-4143. Written materials in alternate formats for persons with disabilities are made available upon request. TTY users dial 7-1-1 in the State of Maryland or 1-800-735-2258 outside Maryland.

Town of Berlin
Board of Zoning Appeals
April 14, 2021

Chairman Joe Moore called the April 14th, 2021, Board of Zoning Appeals meeting to order at 5:36PM. Members present were Joe Moore, Woody Bunting, John Apple and Doug Parks. Member absent was Robert Palladino. Staff present were Planning Director Dave Engelhart and Permit Coordinator Carolyn Duffy.

Chairman Joe Moore called for a motion to approve the minutes from the February 3rd, 2021, meeting. Mr. John Apple made the motion to approve the February 3rd, 2021, minutes. Mr. Woody Bunting seconded the motion, and it was unanimously accepted by the commission.

Chairman Joe Moore called Case # 02-03-21-02 Giovanni Pino Tomasello requesting special exception for a conditional use to hold outdoor tented events. Chairman Joe Moore stated following the February 3rd, 2021, meeting he received a call from Mr. Tomasello he stated he has never represented Mr. Tomasello but has known him for several years, the conversation was what should he do. Chairman Moore replied he told Mr. Tomasello he should retain an attorney to handle the issues that remain before the board. He stated that ended the conversation. Chairman Joe Moore stated he visited the property on April 13, 2021, along with the Planning Director Dave Engelhart. Chairman Moore stated if questions were asked that were not appropriate for him to be around, he excused himself. He stated none of those judgements would affect his ability to consider the case on a fair basis. He stated if any board member felt he should recuse himself he would. The members had no objections to Chairman Joe Moore remaining seated on the board.

Chairman Joe Moore stated at the last meeting there was a motion to table the application made by Mr. Woody Bunting. It stated until Mr. Engelhart could get back with the board about the number of guests details on parking site plan, should the site plan be approved by Planning Commission and the maximum number of events that would be held. Mr. John Apple seconded, all other members voted in favor to table the application until Mr. Engelhart reviewed with Planning Commission and scheduled another hearing. Chairman Moore asked Mr. Engelhart to tell the board if he had reached out to the Planning Commission regarding the matter. Planning Director Dave Engelhart replied he had reached out to the Planning Commission Chairman Chris Denny after the last meeting. Chairman Chris Denny stated it did not have to go to planning commission because it was not a permanent structure. Chairman Joe Moore asked Mr. Engelhart to summarize the appeal before them tonight. Planning Director Dave Engelhart stated that this meeting was a continuation of the February 3rd, meeting and it has changed since that meeting from the request of an expansion of the number of guests besides the tenants for the Bed & Breakfast that has been dropped not trying to expand that use granted on June 6, 2012. The tented events they are seeking now are a smaller scale not 100 people but 50 to 60 people for what the tent would accommodate. This would be a temporary event not every day but throughout the year the appellant will discuss. Mr. Engelhart told the board that they could put conditions on how many that would be up to you. Mr. Engelhart told the board each time there is an event they must get approval from the Worcester County Fire Marshal's Office. That would be to check if they have the proper egress in case of an accident or a fire. Mr. Engelhart stated

they discussed the time the music would stop again he deferred to the appellant. The applicants have an upcoming meeting with the Worcester County Liquor Licensing Board. Chairman Moore asked the Board members if they had questions for Mr. Engelhart. Mr. Woody Bunting asked what has been approved before they move on to the tent and how this property can be used. Mr. Woody stated it is a bed & breakfast with a total of five rooms. Mr. Engelhart replied yes that is correct five rooms, two occupants each with a total of 10 overnight guests. He stated the date for that was October 5, 2011. Mr. Bunting had no issue with that change because at that time it was not allowed. The issue he stated was with the serving of food a restaurant he said he would use that term. He asked how many events or days were allowed in a month he questioned. Mr. Engelhart stated the Finding of Facts from June 15, 2012, was prepared by his predecessor Mr. Chuck Ward the Planning Director at that time. Mr. Engelhart read the conclusion of the Findings of Fact to the board.

Mr. Bunting asked if what is being proposed the expansion of the restaurant to be everyday or the invited guests. Mr. Engelhart replied what he just read in the conclusion did not say it could not be every day. Does not say it is limited to a time or an amount in a certain limit of months. Mr. Engelhart stated the minutes are one thing and the motion is another. Mr. Bunting stated this is still a residential property. Mr. Bunting stated I see where you are going with your conclusion. Mr. Engelhart replied it is not my conclusion I did not prepare it. Mr. Bunting stated the use has been expanded and concerned it may not be appropriate in a residential area. Chairman Moore stated the applicant, and the public has a right to rely on the official record if you will. That was made by the Findings of Fact. Chairman Moore stated he can recall saying he thought it was more of a rezoning then a conditional use. The Findings of Fact that is what the public can rely on.

Mr. Bunting felt there should be a comment from the Planning Commission due to the restaurant and the requirements and parking. Chairman Joe Moore asked Mr. Engelhart if he was satisfied with Chairman Chris Denny's determination of what the problems were. Mr. Engelhart replied yes it was an informed decision. He asked if it was being rezoned Mr. Engelhart replied no. Chairman Denny replied so it is temporary. Mr. John Apple asked if the Liquor License would be tied to, the events. Mr. Engelhart stated that should be referred to by the applicant.

Chairman Moore called Mr. Hugh Cropper and the applicant Mrs. Maya Tomasello. Chairman Moore swore in Mrs. Maya Tomasello, 15 Harrison Ave. Berlin, MD 21811. Chairman Moore asked Mr. Cropper to identify himself. Mr. Hugh Cropper representing Mr. & Mrs. Pino Tomasello seated in the audience they are the property owners. Also, he stated he was representing Marco & Maya Tomasello who lease this property from the mom and dad, and they live in it as their permanent residence. Mr. Hugh Cropper stated they were there for a conditional use for outdoor tented events. Mr. Cropper stated he was not prepared to argue about old files, but he had them and they rely on them. They are here to limit their presentation on the outdoor events. Mr. Cropper stated they have a meeting next week at the county but not for liquor only beer and wine. Mr. Cropper stated the nature of the business he believes requires a license for beer & wine. Mr. Cropper asked his client if they rented the property from their in-laws. She replied yes, they do. They would be residing on the property full time and had no plans on moving. Mr. Cropper stated they were requesting tented events in front and in the rear

of the property. Mr. Cropper stated they were only seeking a beer & wine license from the county and no hard liquor. Mrs. Tomasello replied that is correct.

Mr. Cropper gave Mr. Engelhart Exhibit #1 that were volunteered by Mrs. Tomasello for conditions of approval; Tents to be installed by Coastal Tents or other reputable company, Outdoor Events not to exceed sixty (60) persons, per event, Indoor capacity to remain at thirty (30) persons, not to exceed sixty (60) persons, cumulatively, any live entertainment shall be non-amplified, and end at 9:00PM. Parking at the Berlin Library, per agreement, or on-site.

Mr. Cropper marked the agreement for parking at the Library as Exhibit #2. This allows them to use 40 parking spaces at the library. Mr. Cropper stated that their property was adjacent to the library and guests can walk back and forth. Mr. Cropper stated they had improved the onsite parking and was determined by Planning Director Dave Engelhart to have twenty-one parking spaces. Mr. Cropper stated that Mrs. Tomasello had asked Coastal Tents to prepare a diagram of what the tent would look like. He also entered it as Exhibit #3. Mr. Engelhart stated it was in the February meeting packet and we reproduced it for this meeting. Mr. Cropper stated it would not be two tents at once it would be either or. Mrs. Tomasello replied yes either or. Mr. Cropper stated Coastal Tents had been around a long time and they would get the proper approvals from the Fire Marshalls Office. Mr. Cropper asked Mrs. Tomasello what type of events they would propose. Mrs. Tomasello stated they were proposing to have outdoor intimate events including weddings, family celebrations centered around a birthday, anniversaries also interested in having holiday celebrations, but primary would like to have weddings. She stated looking most forward to having the weddings. Mr. Cropper asked about the web site to promote the business. Mrs. Tomasello stated she built it on a hosting platform it lets the guest know about the property what they can expect the kind of events they like to hold. It has how they can book their overnight stays. They have a history section she stated she spent a lot of time researching. Mr. Cropper stated the property goes back to the late 1700's. Mrs. Tomasello stated lots of history tied to the property. She stated the web site was pretty in depth with history and of the community. Mr. Cropper stated he went on the web site, and it was advertising for the Bed & Breakfast. Mr. Cropper asked since they have been living on the property had they done any upgrades. Mrs. Tomasello replied yes, they have done quite a bit to make the property beautiful and more aesthetically pleasing and more functional. The outside deck they expanded on and changed out the wood to Azek because it is more durable. They also had a brick patio placed under that to add more outdoor relaxation space. They have done landscaping had to clear out the previous property owners' things selling things getting rid of things that could not be salvaged. She stated they did hold on to some of the antiques.

Mr. Cropper handed out Exhibit #4 some pictures taken of the parking area previous oyster shells and the parking area of the library. He stated that showed the proximally of the parking lot. Exhibit #5 showed how they cleared out the landscaping. Exhibit #6 on the other side to show the landscaping the mulch and oyster shells throughout the property. Mr. Cropper stated to sum of the testimony you live on the property full time. Mrs., Tomasello replied yes. He stated you are not expecting to move, and you would be there for all the events. She replied yes. Mr. Cropper asked would she ensure any noise ordinance through the town of Berlin. She replied yes. Mr. Cropper asked would she ensure any conditions that would be placed by this board or the liquor board. She replied yes. Mrs. Tomasello thanked the board for hearing them hoping to

bring people to the town of Berlin to help with the economy and the growth. Mr. Cropper stated that would be their presentation. Chairman Joe Moore asked if there were any questions from the board members. Mr. John Apple told them it was a great presentation. He had questions about the pictures and the site plan. He stated the event space was near the trees. Mrs. Tomasello stated that there is a slope going down to the green space it is approximately 50 feet she guessed and about 50 feet from the slope and the tree line. Mr. Apple asked if they would be placing the tent in the grassy space between the tree line. Mrs. Tomasello stated their property ends at the tree line. The tent would go vertically down the tree line. Mr. Cropper replied or in the front yard. Mr. Cropper stated Mr. Apple is asking if you would not cover the parking with the tent. It would be on their side of the trees. Mr. Engelhart stated the property behind them belongs to the county part of the library property.

Chairman Joe Moore stated they were there on the property and the elevations go down substantially. He stated it is an illusion because there is lots of space. Mr. Woody Bunting stated they testified they have 21 spaces, he wanted to know how they would access them. Mr. Engelhart told him across the back they have fifteen with the bumpers and then he stated he wheeled from the property lines and before you get to the circle of the driveway, he came in 20 feet and measured up that gave him six more parking spaces when they were on the property. He stated call it a minimum of twenty-one but thought he could get more than that. That was just on the shell portion of the driveway. Mr. Woody Bunting asked if he were comfortable, that they would not have to move vehicles to get other vehicles out. Mr. Engelhart replied yes.

Mr. Woody Bunting asked if they had stated how many events they were proposing. Mrs. Tomasello replied they had not. Mrs. Tomasello stated she had not yet received any request yet and therefore did not have a number in mind. Mr. Bunting stated he noticed they must give a three week notice to the county. Mrs. Tomasello stated that is correct. Mr. Bunting asked was this something you would do every week. Mrs. Tomasello replied it would depend on the interest they receive, as of now she has not received any interest yet do not have a number in mind or an idea of a number. Mr. Bunting asked if she has had any discussion with the neighbor Mr. Joe Hill on how it would affect him. Mrs. Tomasello replied the only conversation with Mr. Hill has been talking about their dogs and general landscaping. Mr. Bunting asked is the intent to be used as a restaurant. Mrs. Tomasello replied they intend to serve breakfast, lunch, and dinner per the previous exception. She stated whatever they can do is what they want to do. Mr. Bunting asked you have no plans other than to do that. Mrs. Tomasello replied not planning on serving breakfast, lunch, and dinner to the public. But because of the exception the property has we would like to continue to do what has been offered. Mr. Apple asked if they were forecasting a great clientele. Mrs. Tomasello stated they have had request for overnight booking for the Bed & Breakfast. She stated social media has been positive in what they are doing.

Mr. Doug Parks asked about the noise ordinance. Mr. Engelhart replied noise is a repetitive noise between 7:00AM and after 8:00 PM. Anything that could be defined as a nuisance and is enforced by the Berlin Police Department. Mr. Engelhart stated we have received complaints in the office, normally its construction related. It is usually on a complaint driven basis. Chairman Joe Moore asked if anyone present wanted to speak for or against the application. Chairman Joe Moore stated that they have questions that were posed to Mr. Englehart's office today which allows him to provide them to the board for consideration questions and answers. Mr. Engelhart

stated they could read the questions and, they have questions coming in from Facebook. Mr. Apple asked Mrs. Tomasello if she had contacted complainants like Mr. Hill. Mrs. Tomasello stated they are neighbors and they do speak as she stated before. Chairman Moore stated Mr. Engelhart had provided them with the written questions received from the public. It had been suggested that the members take time to visit the property to get an idea of the changes that had occurred. They each stated at one time or another they had been on the property for different reasons. Questions had come from residents in the surrounding neighborhood that had concerns about the events that would be taking place in their neighborhood. Concerns like noise, how many people, how long will it last, who would they call for enforcement of violations, is it a restaurant. Every question was answered for each of the residents that sent in a list of questions to be answered during the meeting. Mr. Bunting reiterated on the question that was asked is it a restaurant. Mr. Engelhart stated they can have room guests of 10 people and 20 from the public per the Conditional Use.

Mr. Engelhart reiterated that tonight's meeting was about the conditional use to hold outdoor tented events. Chairman Moore stated what they are asked to do is for this request tonight but thought what Mr. Bunting was saying about the Findings of Fact were not resolved. Mr. Bunting stated when he made his motion seven years ago it was about invited guests but thought what he was hearing now is that this is going to be a restaurant. Beer & Wine License and they have no control on how many days and nights they would be open as a restaurant in a residential area. That technically is not allowed in a residential area. He stated he agreed with what was said several years ago it should have been rezoned but we are expanding on that and was concerned with that function makes it more of a commercial use. He stated that was not his intention when he made the motion seven years ago. Mr. Cropper stated it was nine years ago and it was an opinion of this board that is a record of this town. He stated the Tomasellos brought that property and paid a lot of money for it based on that opinion. The property has a kitchen for the guests, and they have spent a lot of money on renovations based on the opinion. This is from the town and you cannot go back and say look at the deed. They have spent a lot of time cleaning and painting and getting ready. Mrs. Tomasellos web page is for a Bed & Breakfast. Mr. Cropper stated they do not want to waive any rights that they are already given.

Mr. Cropper stated we did not pay money to come here to get interpreted. Mr. Cropper told Mr. Bunting he did not think it was fair to say I do not like the tent because I do not like the interpretation of this. He stated they were not here in 2012 they brought a piece of property and this came with it. He stated just like a deed restriction that is recorded in the land records. Mr. Bunting replied he did not like the expansion the commercial use on a residential lot. Chairman Moore stated the reason he asked Mr. Engelhart to read the Findings of Fact because it is an official action of the board. Chairman Moore stated Mr. Cropper has quoted and is exactly right that people have a right to rely on the action of the authority that is reflected in the official Findings of Fact. It is correct that if a person cannot rely on the Findings of Fact even if in error, we did not correct them. Must rely on the record and the issue before the board tonight is the request for the outdoor venue. Chairman Moore again stated Mr. Cropper was correct the applicants have the right to rely on the Findings of Fact. Mr. Bunting told the Chairman he respected his opinion.

Chairman Moore asked if there were more comments from Facebook. Mrs. Ivy Wells of Economic Development was present and read comments from Facebook that were coming in to make sure people were being heard. Chairman Moore clarified a comment from the previous meeting about how many people were allowed in a restaurant setting for a Liquor License from Worcester County. Chairman Moore stated that had been clarified they will not have seventy seats and would be requesting a Beer & Wine License from Worcester County. Mr. Cropper stated that The Inn must carry a one million-to-two-million-dollar insurance policy and the county could terminate the agreement if they chose to within seven days at the Library. Mr. Engelhart stated that the Bed & Breakfast use had never ceased.

Mr. Engelhart stated he had asked Mrs. Wells to attend the meeting she is the Director of Economic Development and a resident of the town. He wanted her to comment in the public comment section of the meeting being a resident of the town. Mrs. Wells expressed her support of the venue and looking forward to what it might add to the town. Mrs. Wells stated this was needed in town. The economics is people come to town, they shop, they dine, it has an effect of the vitality of the town.

Mr. Cropper stated he thought it was appropriate and in a good location and complemented the town. He stated nothing about the Conditional Use was disproportionate. He stated it was adjacent to the library for parking and with the insurance indemnity they can meet. The Inn does have five rooms and felt this was needed in Berlin. Mrs. Tomasello's family has worked hard and will be good neighbors. Mr. Cropper stated they propose to limit it to twenty events a year. He stated that is less than two a month not all will have 60 people at a wedding. They are looking for small intimate events for families to come to Berlin for the weekend. He stated the building needs to be utilized and it is an historic building. He stated it has been there for well over two hundred years and they have saved it and should be enjoyed by the public. Mr. Cropper said he did not see it as a commercial use and told the board they appreciated their time and thought this was good for the town. The Tomasellos have put a big stake in this and hopefully the events will let them sustain this use and to keep it in first class condition like it is now.

Mr. Engelhart asked to read one last comment that Mr. Cropper stated he objected to comment section was closed but he let it be read. Mr. Engelhart stated resident on Brittany Lane was against it being use for a wedding venue due to the noise factor and people drinking and loud music in a quiet residential neighborhood. Chairman Moore stated it was the Boards obligation to make a determination not whether the use is detrimental of surrounding property because the cases say that the law presumes that there will be some detrimental use otherwise it would be a permitted use. The law says it is our determination to find a uniquely detrimental effect on the particular location as opposed to a similar use in an R-2 zone in Berlin. He stated this was the Board's obligation. Otherwise, it is presumed that the Condition Use must be granted unless it has a detrimental effect based upon a particular characteristic of the neighborhood. Unless that occurs, it can be erroneous of the board. Chairman Moore stated he wanted to say his determination years ago has nothing to do with where they are tonight. Chairman Moore said Mr. Bunting said it was prophetic, but he said they decided on what they decided on. Chairman Moore asked Mrs. Wells if Merry Sherwood was open now. She replied it was, but she thought due to Covid it is closed now it was open she replied year before last. Chairman Moore stated he has enjoyed Merry Sherwood, but the location was not in town. The potential for a wedding

venue would be like this one. He stated when he was on the property the front yard was deeper than any in Berlin. He stated based on the reliance he told the board if you feel it is detrimental you can vote that way. He suggested if the Board voted it was detrimental then you could vote against the Conditional Use if you did not make that finding but wanted to consider his suggestion would be to have the determination reviewed in a period of time say in two years to see if the conditions Mr. Cropper put out there could be revisited to see whether those conditions have been upheld. If they have, the Board without an agenda item could revisit the issue. Chairman Moore stated in his opinion Mr. Cropper has made a point that this is a uniquely non detrimental property because of the location next to the library and more importantly the availability of parking. He stated he knew of no other place in town where this could be held in a residential area. He stated they made an error nine years ago with a regard to the Findings of Fact but that is not the error that can be imposed upon the applicant that is our error. He stated people have a right to rely on the official record of the town. With that he stated he would accept any comments from the Board.

Mr. Doug Parks thought that in the motion it should be included the limit they have proposed per year. Discussion continued with Mr. Bunting questioning how that twenty events would be applied. Mr. Apple questioned if they could amend the original document due to the concerns this was going to be a restaurant. He stated limiting the times fit in better with the surrounding communities. He asked could they approve this by amending the original Exception and Conditional Use. Chairman Moore asked to change the original in what way? Mr. Apple stated the meeting was to label it a Bed & Breakfast he stated from a business standpoint they want to make money with the people staying there and dining. The concern from the surrounding neighborhood is, is this going to be filled with people every night. He asked is there something there they can amend for the surrounding neighborhood to add to it not being a restaurant.

Chairman Moore swore in Mr. Giovanni Pino Tomasello. Mr. Tomasello stated when he was approached by the previous owner before he made the agreement, he went in to see the Planning Director Dave Engelhart. Wanted to know what was available on this property for him to use. He was told the property in 2012 was used for a Bed & Breakfast and was used for a restaurant. The previous owner had put a lot of money into that kitchen Mr. Tomasello stated. Mr. Tomasello stated he has worked in Ocean City many years never had problems with anyone, he does not want to create problems with neighbors. He stated he purchased the property with the intention that was given to him in writing. He stated he has spent plenty of money on the improvements and disagreed with Mr. Apple to remove what the Findings of Fact stated years ago. Mr. Tomasello was very upset, stated he would sell the property the next day.

Mr. Apple replied not proposing to take that away from you but to keep it at a minimum and tie the exceptions together. The initial meeting getting a liquor license to accommodate getting a liquor license now you have beer & wine by the maximum people allowed. He asked was a way to tie the exceptions together so if they wanted to come back and expand the amount of seating again it would take in to account the outdoor seating we are about to do along with the Bed & Breakfast of the Inn and restaurant. Chairman Moore replied the answer is yes. He stated the record reflects the Findings of Fact were the basis for them buying the property. The question is can they say in that capacity remain at thirty persons that the outdoor events would not exceed 60 persons and that there would be no expansion of the proposed conditions of approval. The


answer to this is yes because they have offered these conditions for our approval. (1) Trying to get the board to revisit the record that the people can rely on is clear, (2) Whether or not this property and for this use at this location is uniquely detrimental other than the effect the Conditional Use has on the R-2 property. He stated this is the legal obligation they have. The applicants say they are okay with the conditions. Mr. Apple stated he had more to tie into it and for the surrounding communities as well. He stated the original application would have been detrimental to the surrounding area, to come in with 100 people no restrictions and no time limit. Mr. Apple stated there are properties on the other side of Brittany Lane a large estate near Adkins Company. There are numerous houses down Broad Street. More on Main Street this approval could open the possibility for others to do the same. Mr. Engelhart stated any Bed & Breakfast is a conditional use, they would come before the board for a conditional use to operate the Bed & Breakfast that is by the code. That is what the previous owner did then came back for the conditional use.

Chairman Moore told Mr. Apple they have to find that this property has a more detrimental effect than other properties. Mr. Apple stated the approval carries with the property not the owner. Chairman Moore stated it is the right of the property owner to rely on the decisions that are made. Mr. Apple asked is there a way to make the approval to the property. Chairman Moore stated he believed he was right you can make that decision to a single owner. Chairman Moore stated the conditions are the conditions the owner is willing to abide by on that property any purchaser would have to abide by those conditions. Chairman Moore stated they have offered conditions and if you have more you can offer those but that would be for Mr. Tomasello alone. Mr. Apple asked if he sold the property the new owner would take over with the same conditions. Chairman Joe Moore answered that is correct.

Chairman Joe Moore stated if there were no further comments, he would entertain a motion. Mr. Doug Parks made the motion to approve the request of what the owners have offered which are the conditions in Exhibit #1 and the added limit of twenty events with not more than one unrelated event per week.

Mr. John Apple seconded the motion. With a 3/1 vote Mr. Doug Parks, Mr. John Apple and Chairman Joe Moore voted yes. Mr. Woody Bunting opposed. The meeting was adjourned at 7:32PM.

Respectfully Submitted,


Carolyn Duffy



Mayor & Council of Berlin

10 William Street, Berlin, Maryland 21811

Phone 410-641-2770 Fax 410-641-2316

www.berlinmd.gov



BOARD OF ZONING APPEALS APPLICATION

ADDRESS OF PROPERTY: 7 Cape Circle DATE: 06/18/2021

APPLICATION FOR: ☒ VARIANCE ☐ CONDITIONAL USE ☒ APPEAL

LOT # 30 LOT SIZE: 14387 sqft ZONING DESIGNATION: _____ TAX MAP 0302 PARCEL 0401

APPELLANT NAME: Loren Hershberger ADDRESS: 7 Cape Circle

APPELLANT PHONE#: 443-397-3546 APPELLANT EMAIL: hershberger.57@hotmail.com

PLEASE PROVIDE A BRIEF DESCRIPTION OF THE GROUNDS FOR THE APPEAL. IF THE REQUEST IS FOR A VARIANCE, PROVIDE A DESCRIPTION OF THE LAND USE HARDSHIP. IF THIS IS A CONDITIONAL USE REQUEST, PROVIDE A BRIEF DESCRIPTION OF THE PROPOSED USE:

PROPERTY OWNER: Loren Hershberger ADDRESS: 7 Cape Circle

PHONE #: 443-397-3546 EMAIL: hershberger.57@hotmail.com

OWNER SIGNATURE: Loren Hershberger DATE: 06/18/2021

FOR OFFICE USE ONLY

CASE # 07-07-21-3 DATE APPLICATION RECEIVED 6/18/2021

HEARING DATE 7-7-2021 PROPERTY POSTED DATE 6/24/2021

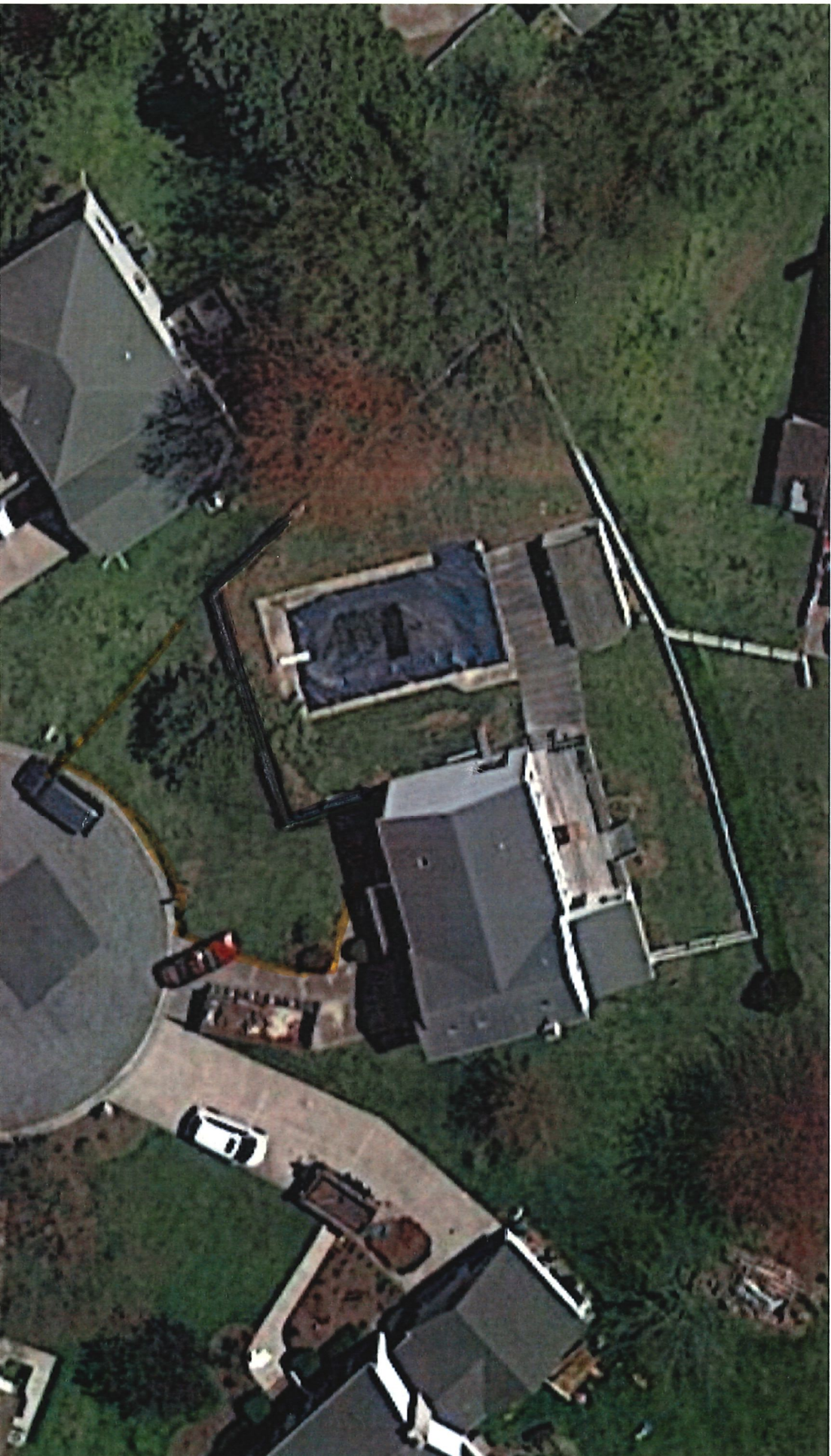
FEES DUE \$325.00 FEES PAID \$325.00 - 6/18/21

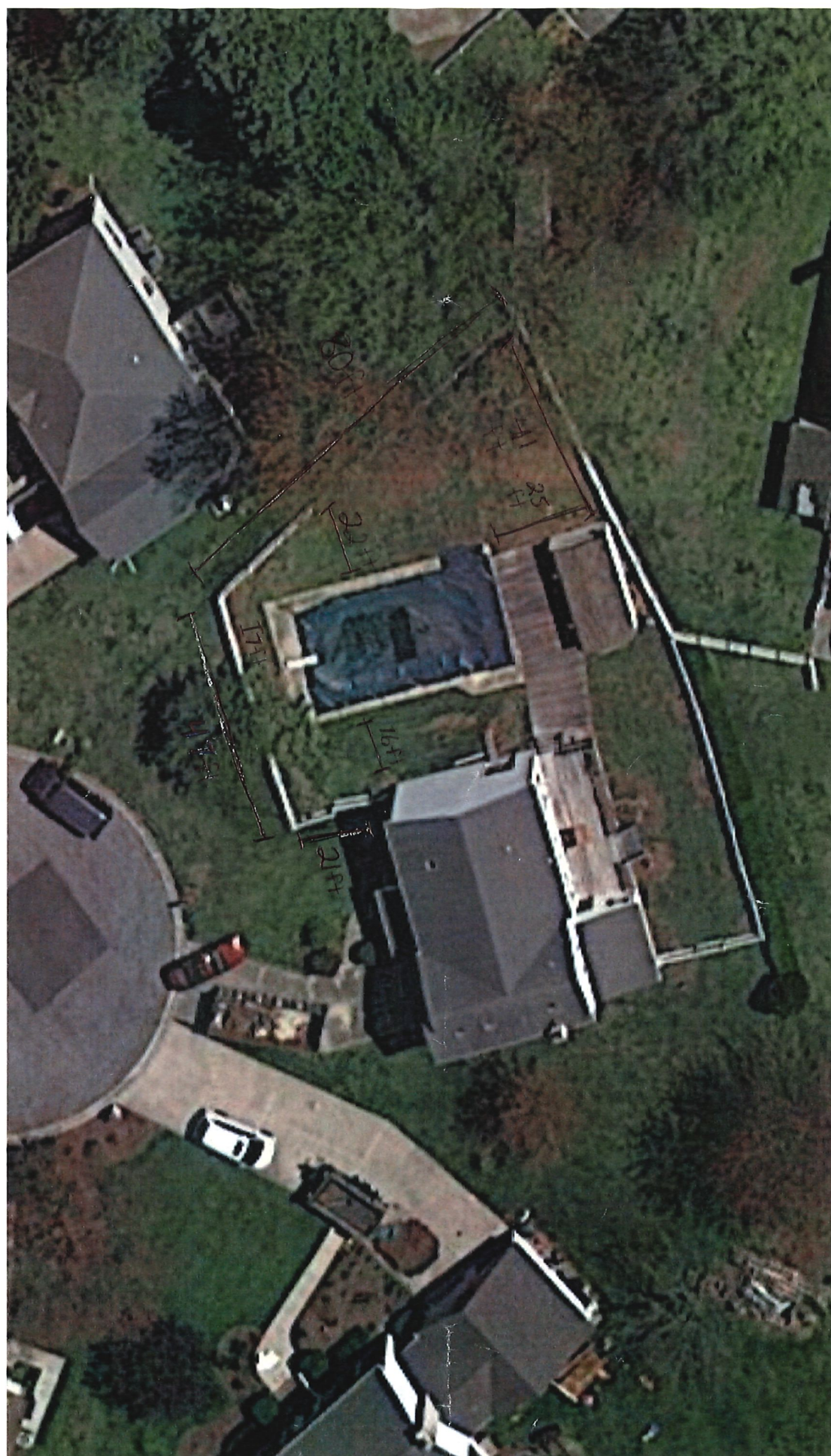
DECISION: _____

affected fence area in front of house

maintained front yard area

- requesting 6' height
 - pool protection
 - kids / neighborhood safety
 - containment while maintaining front yard area

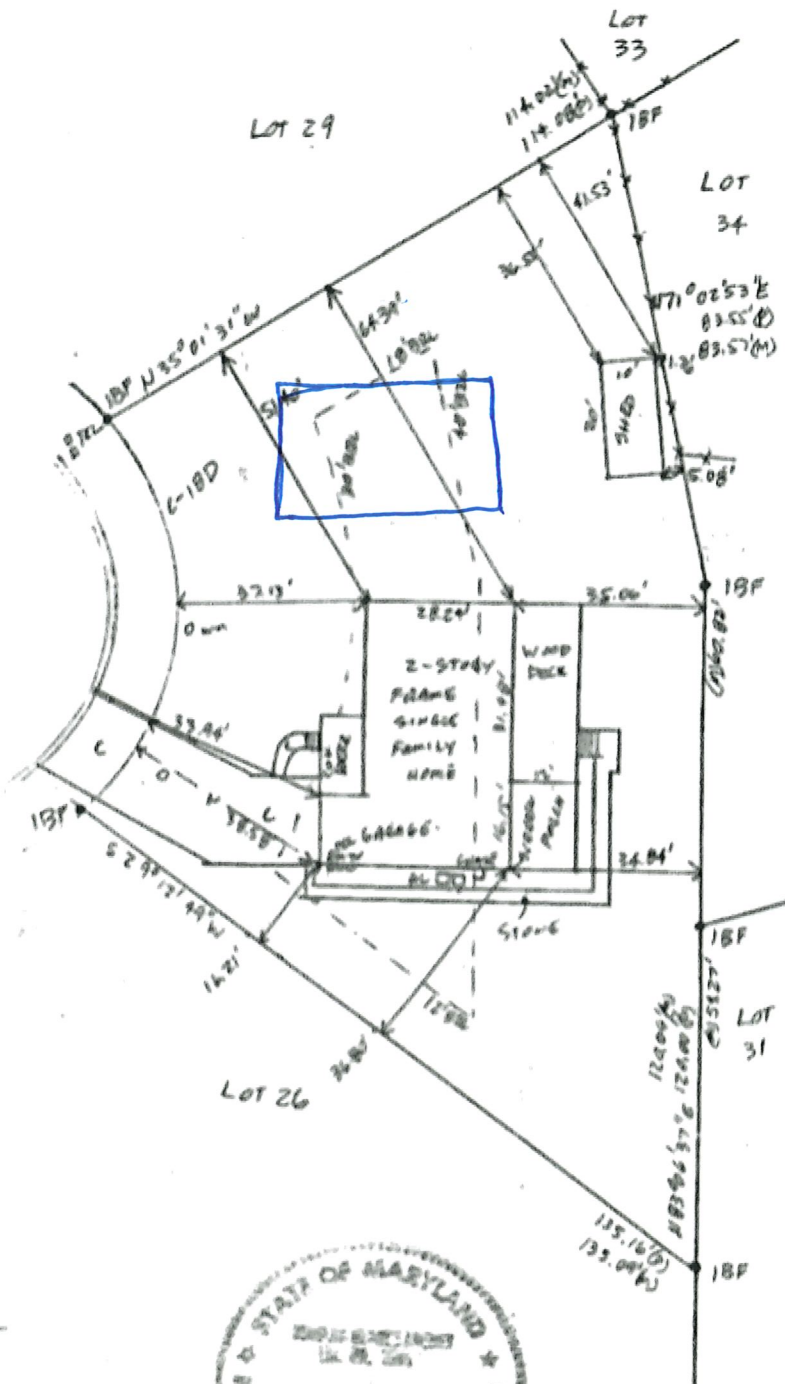






CAPE
CIRCLE
50' R/W

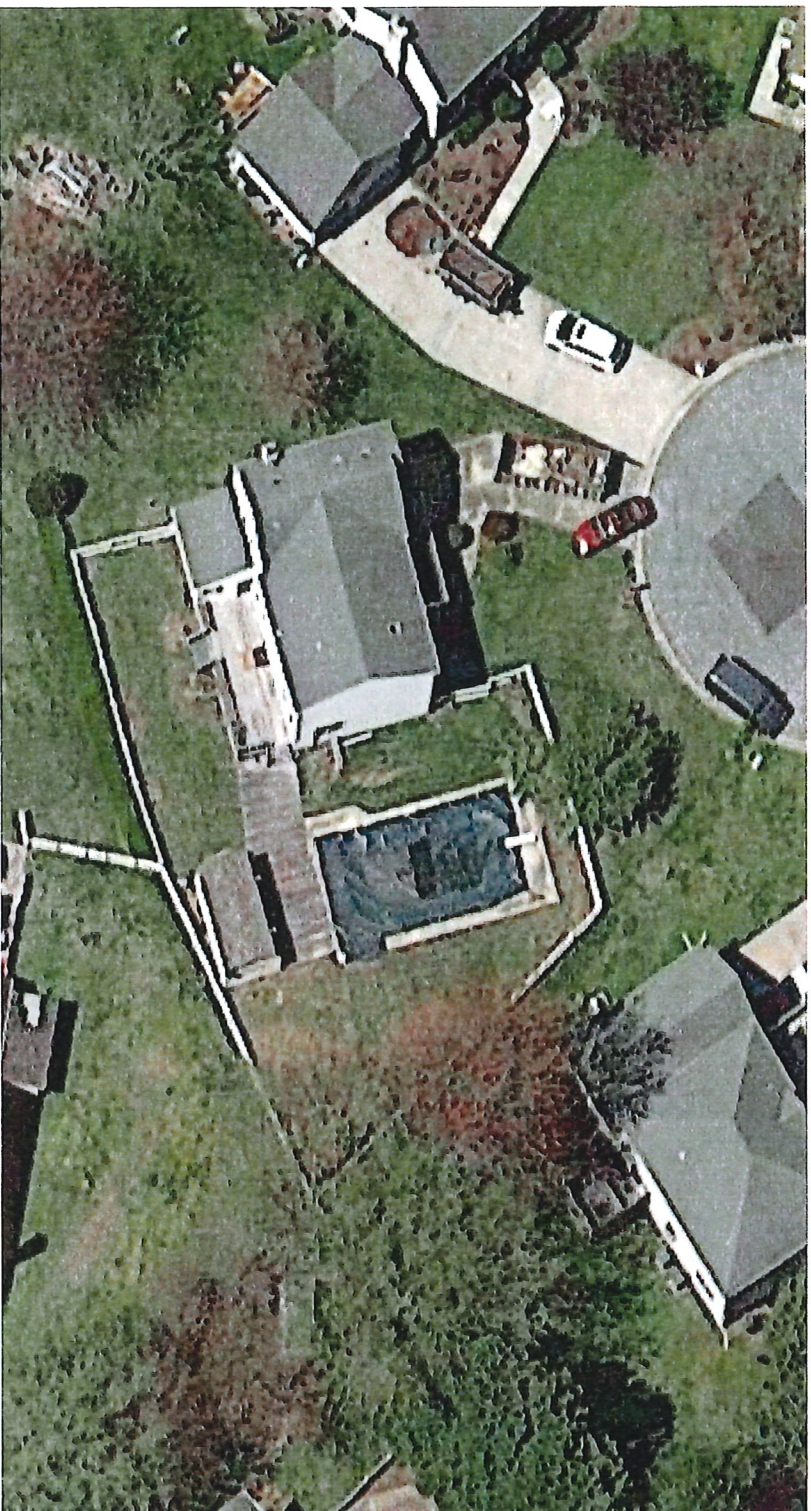
ROLLED
CUB



FENCE PROPOSAL

7 CAPE CIRCLE, BERLIN MD 21811

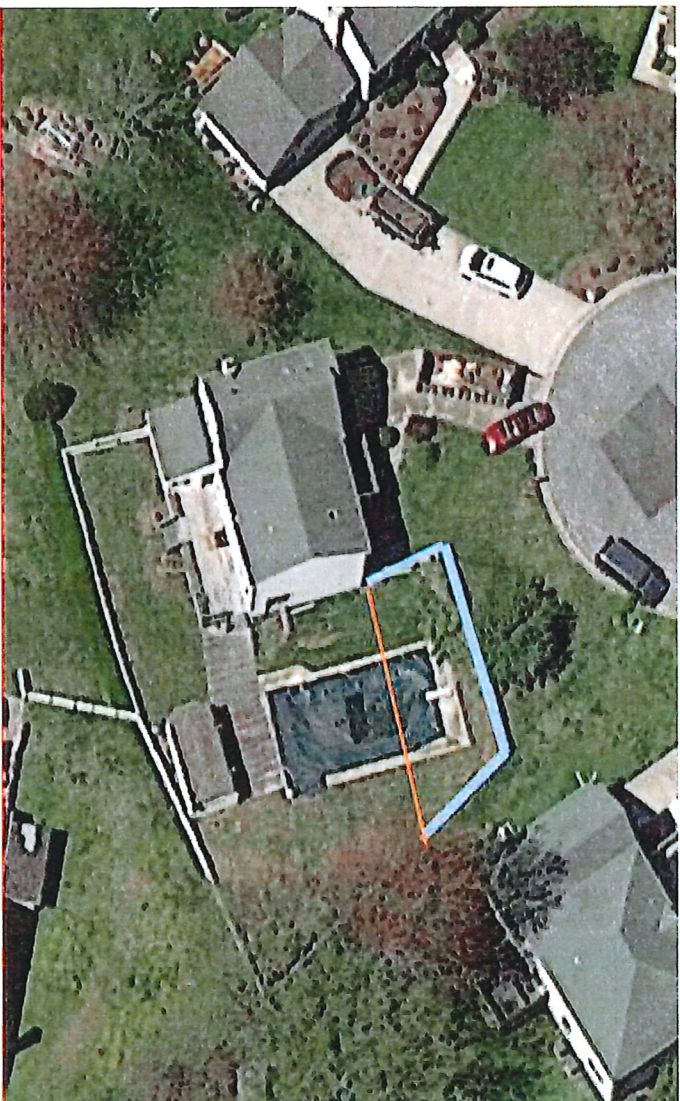
GOOGLE MAPS IMAGE



OBJECTIVES

1. Replace 4' picket with more appealing 6' vinyl fence
2. Become compliant with Wicomico County MD's Barrier and Gate Requirements for Swimming Pools, Spas and Hot Tubs
3. Improve Neighborhood Safety & Morale
4. Maintain Frontage

REPLACE 4' PICKET WITH MORE APPEALING 6' VINYL FENCE



Code requirements for 6 ft fence

Fence area being requested 6 ft

BECOME COMPLIANT WITH WICOMICO COUNTY MD'S BARRIER AND GATE
REQUIREMENTS FOR SWIMMING POOLS, SPAS AND HOT TUBS

PER WICOMICO COUNTY MD

"The barrier should have no footholds or handholds that could help a young child to climb it."

"Gates shall also be equipped to accommodate a self locking, self closing device."

"Pedestrian gates shall open away from the pool and be equipped with a self closing and self latching device. Gates should be well maintained to close and latch easily."

IMPROVEMENTS TO BE MADE

Removing lateral pickets with 6ft vinyl fencing removes footholds within a child's reach

Removing the non-self locking, non self closing device with one that is in compliance

Removing the gate that currently opens towards the pool with one that is in compliance

IMPROVE NEIGHBORHOOD SAFETY AND MORALE

Drowning is the second leading cause of accidental death in children aged 1-14 in the United States. The water depth of any pool is sufficient for drowning to occur – **US Consumer Product Safety Commission**

Drowning is the #1 cause of accidental death for children ages 1-4 years old
3,500 people will likely die as a result of drowning this year in the US

88% of child drownings occur with at least one adult present – **National Drowning Prevention Alliance**

Continued...

IMPROVE NEIGHBORHOOD SAFETY AND MORALE

Table 6
Percent of Estimated ED-Treated Nonfatal Pool or Spa Drowning Injuries
Children Younger than 15 Years of Age by Location, 2018-2020

Location	Estimated Emergency Department-Treated Injury Percentages		
	Younger than 5 Years	5-14 Years	Younger than 15 Years
Residential	50	31	46
Undisclosed Location	32	30	31
Public	18	40	23
Total	100	100	100

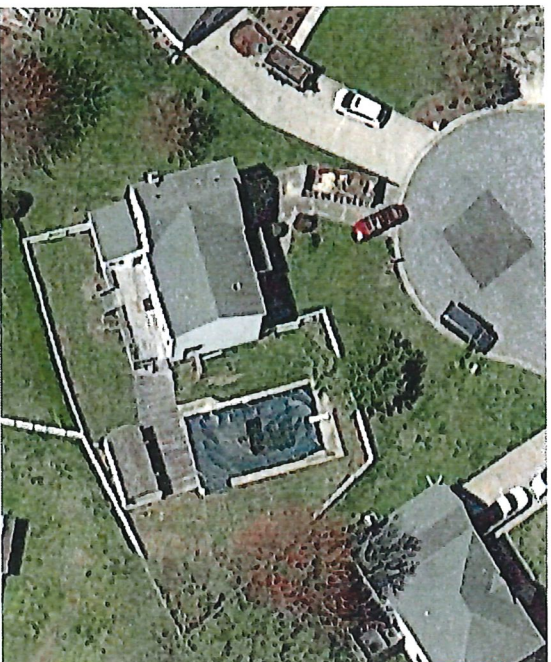
Source: U.S. CPSC; NEISS. Appendix A details the methodology for data extraction. Percentages may not add up to 100, due to rounding.

Table 9
Percentage of Drowning Deaths Reported to CPSC Staff Associated with Pools or Spas
Children Younger than 15 Years of Age by Product Type, 2016-2018

Product	Percentage of Reported Fatalities			
	Younger than 5 Years	5-9 Years	10-14 Years	Younger than 15 Years
Pool	96	100	99	97
Spa	4	-	1	3
Total	100	100	100	100

Source: U.S. CPSC; CPSCNLS. Appendix A details the methodology for data extraction. "-" denotes no data recorded. Percentages may not add up to 100, due to rounding and refer to percentages within each age group.

MAINTAIN FRONTAGE



No change to existing fence layout
Only improvements made to existing fence
blueprint

IN SUMMARY

6' fence adds to the property value of the house/neighborhood & improves street appeal

Improving on many safety features that are not currently up to county & other guidelines

We are in the risk category for residential drowning and non-fatal statistics. With 7+ kids not counting grandkids that regularly live in our cul-de-sac, we believe that the extra 2 feet of vinyl on the few feet of fence extending the house is a positive improvement for the neighborhood and town

We are not being egregious with requests. Same fence blueprint will remain with zero expansion, maintaining frontage

We have neighborhood support

SOURCES

<https://www.wicomicocounty.org/DocumentCenter/View/3898/Pool-Barrier-requirements?bidId=>

<https://www.google.com/maps/place/7+Cape+Cir,+Berlin,+MD+21811/@38.3161822,->

[75.2126497,55m/data=!3m1!1e3!4m5!3m4!1s0x89b9268d54d405e1:0xe6b6201fcb1370d1!8m2!3d38.316072!4d-75.2126959](https://www.google.com/maps/place/75.2126497,55m/data=!3m1!1e3!4m5!3m4!1s0x89b9268d54d405e1:0xe6b6201fcb1370d1!8m2!3d38.316072!4d-75.2126959)

<https://www.phta.org/pub/?id=7592A1CE-1866-DAAC-99FB-8B7C7B4850A0>

<https://ndpa.org/>

SOURCES

[https://www.cpsc.gov/s3fs-public/Pool or Spa Submersion Estimated Nonfatal Drowning Injuries and Reported Drownings May 2021.pdf?HUI14I31PFrMF5Id9DZmzB73fK7SqtVvk8](https://www.cpsc.gov/s3fs-public/Pool%20or%20Spa%20Submersion%20Estimated%20Nonfatal%20Drowning%20Injuries%20and%20Reported%20Drownings%20May%202021.pdf?HUI14I31PFrMF5Id9DZmzB73fK7SqtVvk8)



Mayor & Council Of Berlin

10 William Street Berlin, Maryland 21811

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BOARD OF ZONING APPEALS APPLICATION

Property Location: MAPLE AVENUE Date: JUNE 14, 2021
Lot #: _____ Lot Size: _____ Zoning: R-3 Map#: 0301 Parcel#: 0801, 0802, 0803

Please check (✓) one of the following option requests:

Variance _____ Conditional Use ☒ Special Exception _____

Description of Request:

CONDITIONAL USE FOR CONSTRUCTION OF 33
MULTIFAMILY TOWNHOUSE UNITS

Has the property in question ever been the subject of a previous appeal? NO
If you answered yes, what is the appeal number and date? _____

Property Owner: MAPLE AVENUE OF BERLIN, LLC and CONTRACT PURCHASER UTR VENTURES,
Address: P.O. BOX 591, OCEAN CITY, MD 21842 11934 Ocean Gateway LLC
Suite 14, OC, MD 21842
Phone: 410-430-3971 Owner's Signature: [Signature] Date: 6/14/21
410-726-2927 [Signature] 6-14-21

OFFICE USE ONLY. PLEASE DO NOT MARK BELOW.

CASE #: 07-07-21-4

DATE RECEIVED: 6-14-2021

HEARING DATE: 7-17-2021

LAND POSTED: 6/24/2021

DECISION: _____





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BOARD OF ZONING APPEALS APPLICATION

Property Location: MAPLE AVENUE Date: JUNE 14, 2021
Lot #: _____ Lot Size: _____ Zoning: R-3 Map#: 0301 Parcel#: 0801, 0802, 0803

Please check (✓) one of the following option requests:

Variance ☒ Conditional Use _____ Special Exception _____

Description of Request:

VARIANCE FROM BERLIN CODE SECTION 108-715(b)
to reduce required unit width from 18 feet to 16 feet.

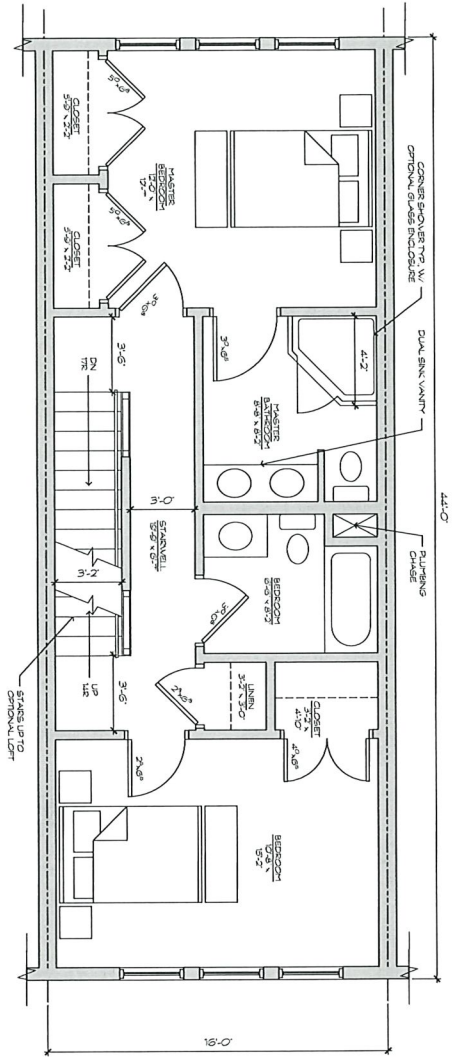
Has the property in question ever been the subject of a previous appeal? _____
If you answered yes, what is the appeal number and date? _____

Property Owner: MAPLE AVENUE OF BERLIN, LLC & CONTRACT PURCHASER UTR VENTURES LLC
Address: P.O. Box 591, Ocean City, MD 21842 11934 Ocean Gateway Suite 14, OC, MD 21842
Phone: 410-430-3971 Owner's Signature: [Signature] Date: 6/14/21
410-726-2927 [Signature] 6-14-21

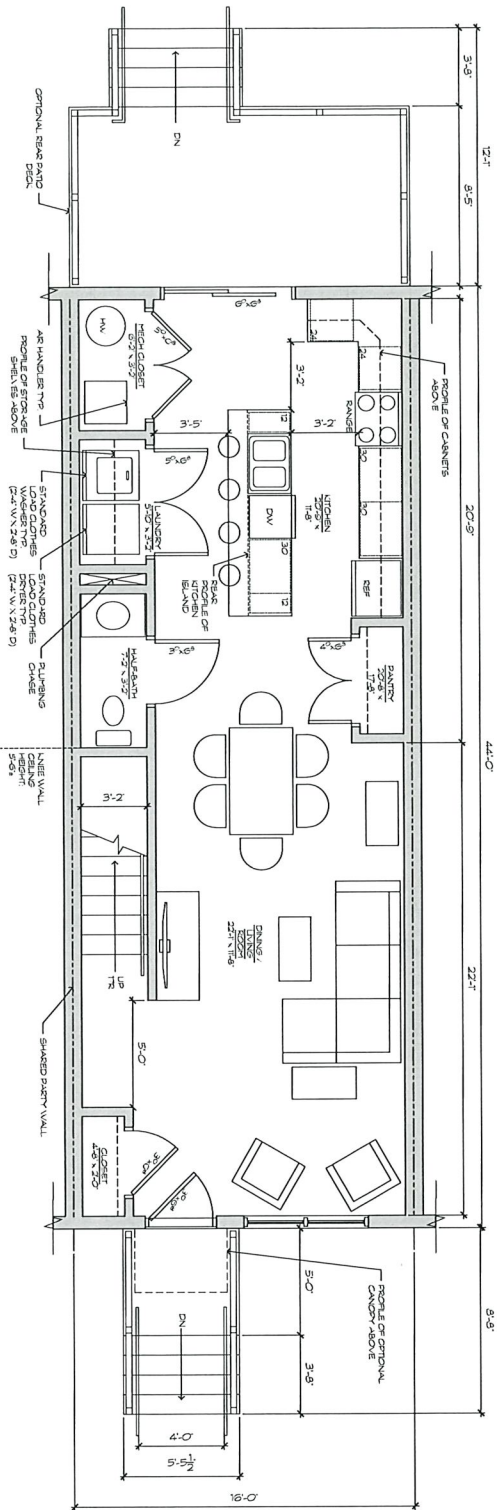
OFFICE USE ONLY. PLEASE DO NOT MARK BELOW.

CASE #: 07-07-21-5 DATE RECEIVED: 6/14/2021
HEARING DATE: 7-7-2021 LAND POSTED: 6/24/2021
DECISION: _____



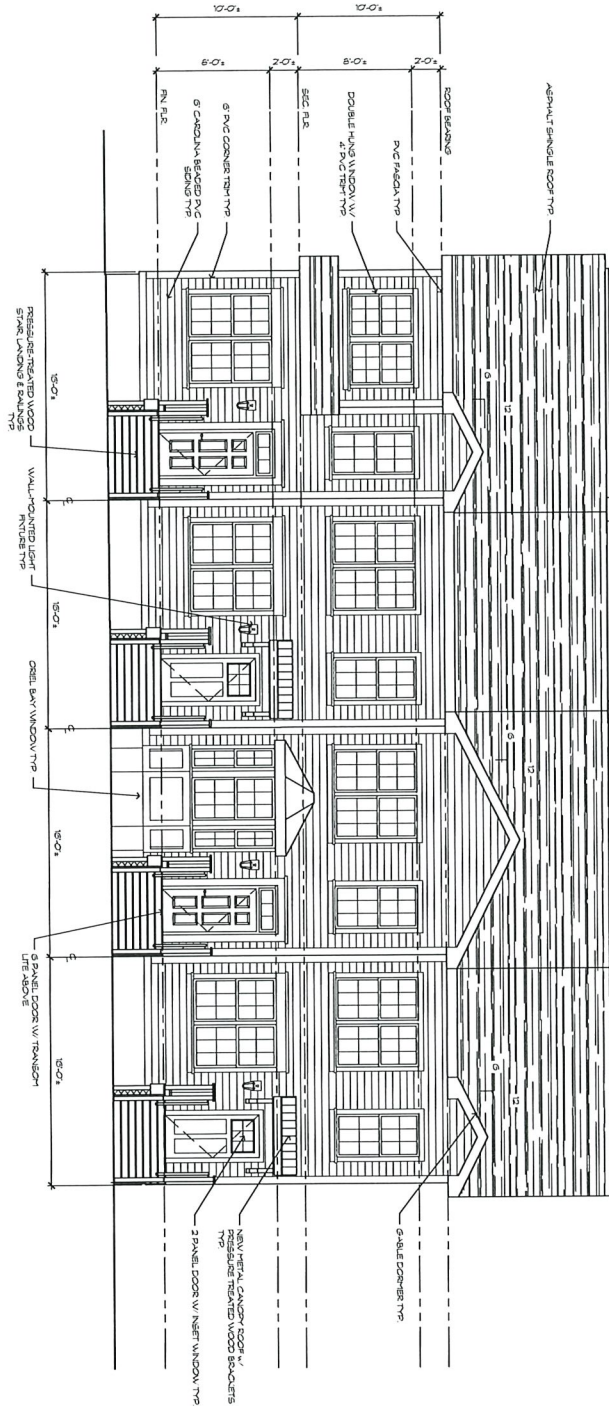


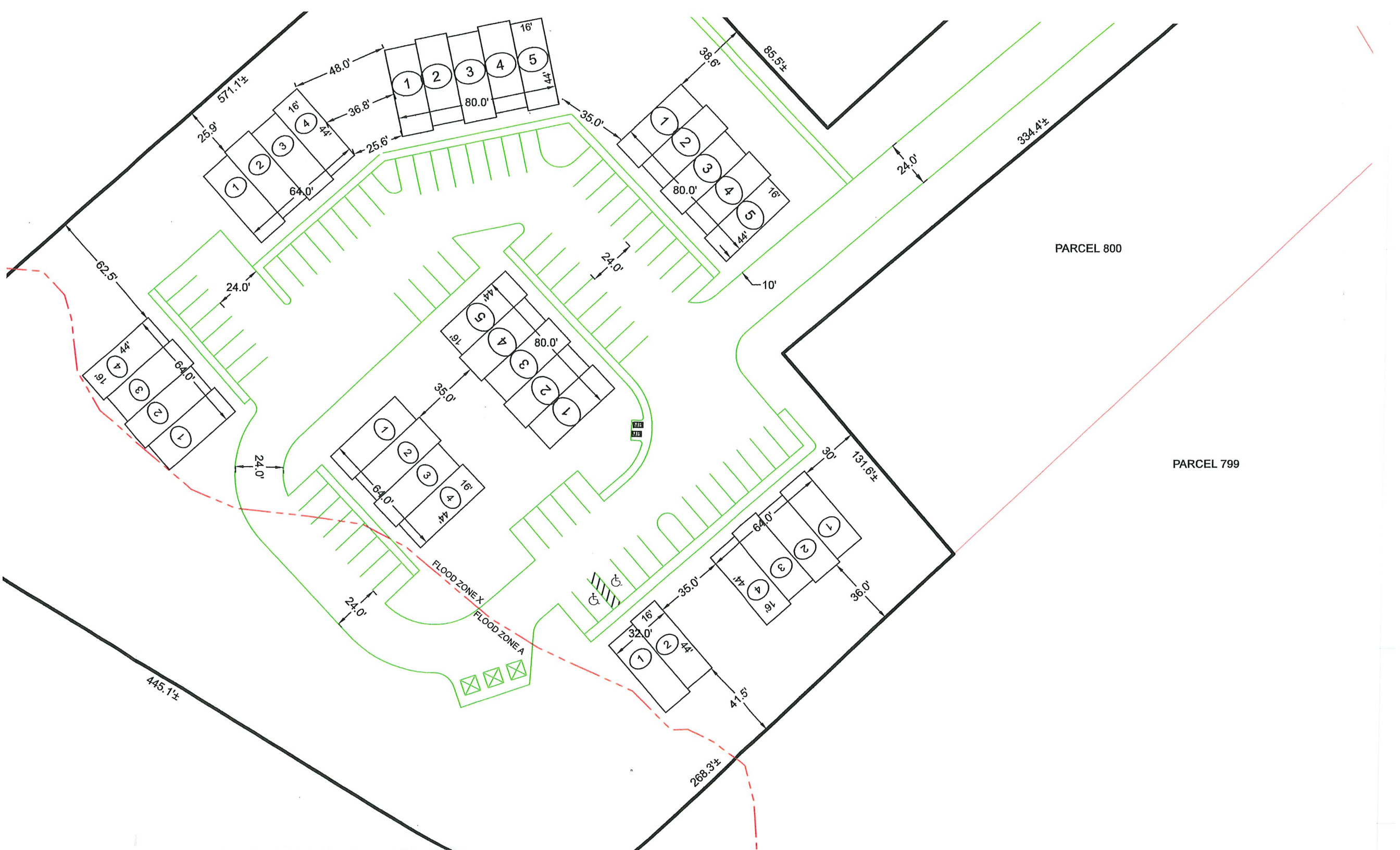
1 SECOND FLOOR PLAN - TYPICAL UNIT (704 GROSS S.F.)
3/8" = 1'-0"



2 GROUND FLOOR PLAN - TYPICAL UNIT (704 GROSS S.F.)
3/8" = 1'-0"

3
ELEVATIONS
1/4" = 1'-0"





PARCEL 800

PARCEL 799